

# **Adaptation of EU legislation in Member States: the case of Romania**

EUIPO Workshop, Chisinau, 15 May, 2025

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# EU legal framework

To exercise the Union's competences, the institutions adopt regulations, directives, decisions, recommendations and opinions.

- Regulation - general application - binding in its entirety and directly applicable in all MS;
- Directive - binding to all MS- leave to the national authorities the choice of form and methods;
- Decision shall be binding in its entirety and specifies those to whom it is addressed;
- Recommendations and opinions - no binding force.

# The EU Directive (1)

- Form of legislation "directed" at MS, setting out an objective or policy which needs to be attained;
- MS must transpose within relevant national legislation the provisions of the Directive;
- Term for transposition set by the directive, (usually two years), also MS being obliged to inform the Commission to that effect;
- Used to set minimum EU standards at national level, sets out a goal that all EU countries must achieve;
- Leave MS the liberty to apply higher standards than those minimum requirements set out in the directive, if do not conflict with free movement and free market rules;
- Once adopted and passed into EU law have legal force even when not yet enacted in national legislation;
- The EU Commission assists member countries in correctly implementing all EU laws (online information, implementation plans, guidance documents, expert-group meetings).

# The EU Directive (2)

The obligation of transposing the EU directives provided for in Art. 288 of the Treaty on the Functioning of the EU (TFEU):

*“A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”.*

The normative acts issued at EU level must be implemented in time, effective, and in a balanced manner.

The Member States, though legislative or executive bodies, must adopt normative acts that to put in force the directive, namely to adopt, in the stipulated term, the transposition measures.

# Romanian copyright regulations (1)

## Framework Law:

*Law no. 8/1996 on copyright and related rights* (in force since 25th of June 1996)

- Supported subsequent modifications and completions, after 2000 mainly for transposing the “Acquis”

# The Romanian Copyright Office (ORDA) (1)

- According to the law, ORDA operates as a specialized body under the subordination of the Government, being the unique regulatory authority, vested with tasks of registration through national registries, supervision, authorization, arbitration and technical-scientific establishment in the field of the copyright and neighboring rights.
- ORDA's activity is coordinated by the Ministry of Culture.
- At present, 38 persons working at ORDA, including the management
- Vision**
  - Development and strengthening of the intellectual property system in the field of copyright and neighboring rights, in order to ensure a cultural and economic environment that stimulates creativity and guarantees the protection and benefit of its results.
- Mission**
  - Promoting the protection and effective use of copyright and related rights in Romania.

# **The Romanian Copyright Office (ORDA) (2)**

- **General strategic objectives**

- Promotion of a culture of copyright and related rights within the national intellectual property system;
- Integration of copyright and related rights within the national policy and program on economic development;
- Improving the national legislation on copyright and related rights, fully harmonized with the international treaties and European acquis and the participation at drafting the EU and international legal instruments in the field;
- Providing of high-quality services within the national system of copyright and related rights;
- Raising awareness on the need to respect and protect copyright and related rights;
- Continuous screening and evaluation

# ORDA – EU Activities

- Develops representation activities in relations with the similar specialized organizations and international organizations in this field, to which the Romanian state is a party;
- The international cooperation and the implementation of various activities in the field of IP are also carried out based on bilateral cooperation protocols signed by ORDA with IP Offices from countries in the region.
- As an IP public authority of an EU Member State, ORDA takes part in related IP meetings organized by various bodies such as the EU Council, the EU Commission, EUIPO;
- ORDA must communicate to the EU Commission any national provisions adopted in the copyright and related rights field;
- ORDA must inform the EU Commission regarding the intention for the adoption of certain national provisions for the regulation of certain new neighboring rights, specifying the essential reasons which justify the regulation of such rights, as well as the adequate protection term



# **Steps for transposing the EU Acquis in Romanian copyright law – before becoming a EU Member State (1)**

**1996** (since the appearance of Law no. 8/1996)

- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs;
- Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property,
- the Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyrights applicable to satellite broadcasting and cable retransmission,
- Council Directive 93/98/EEC of 29 October 1993 regarding the harmonization of the term of protection of copyright and certain related rights;
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of the databases.

# **Steps for transposing the EU Acquis in Romanian copyright law – before becoming a EU Member State (2)**

**2004** (through the Law no.285/2004)

- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects on copyright and related rights in the information society.

**2005** (through the Emergency Ordinance of the Government no. 123/2005 approved by Law no.329/2006)

- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right of the author of an original work of art;
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

# **Steps for transposing the EU Acquis in Romanian copyright law – after becoming a EU Member State**

**2015** (through Law no. 53/2015)

- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights;

**2015** (through Law no. 210/2015)

- Directive 2012/28/EU of the European Parliament and of the Council on certain permitted uses of orphan works;

**2017** (very soon)

- Directive 2014/26/EU of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

# The process for transposing the EU Acquis in Romanian copyright law (1)

One main attribution of ORDA: drafting projects of normative acts in its field of activity;

ORDA has not legislative incentive and cannot sign law projects as co-initiator

- According to the law, ORDA submits proposals for modification of Law no. 8/1996 aiming at transposing the European directives in its field;

- **Prior drafting:**

- ORDA initiates consultations with various stakeholders;
- Debated in the National Working Group on IP;
- Elaborates the Table of Concordance

# The process for transposing the EU Acquis in Romanian copyright law (2)

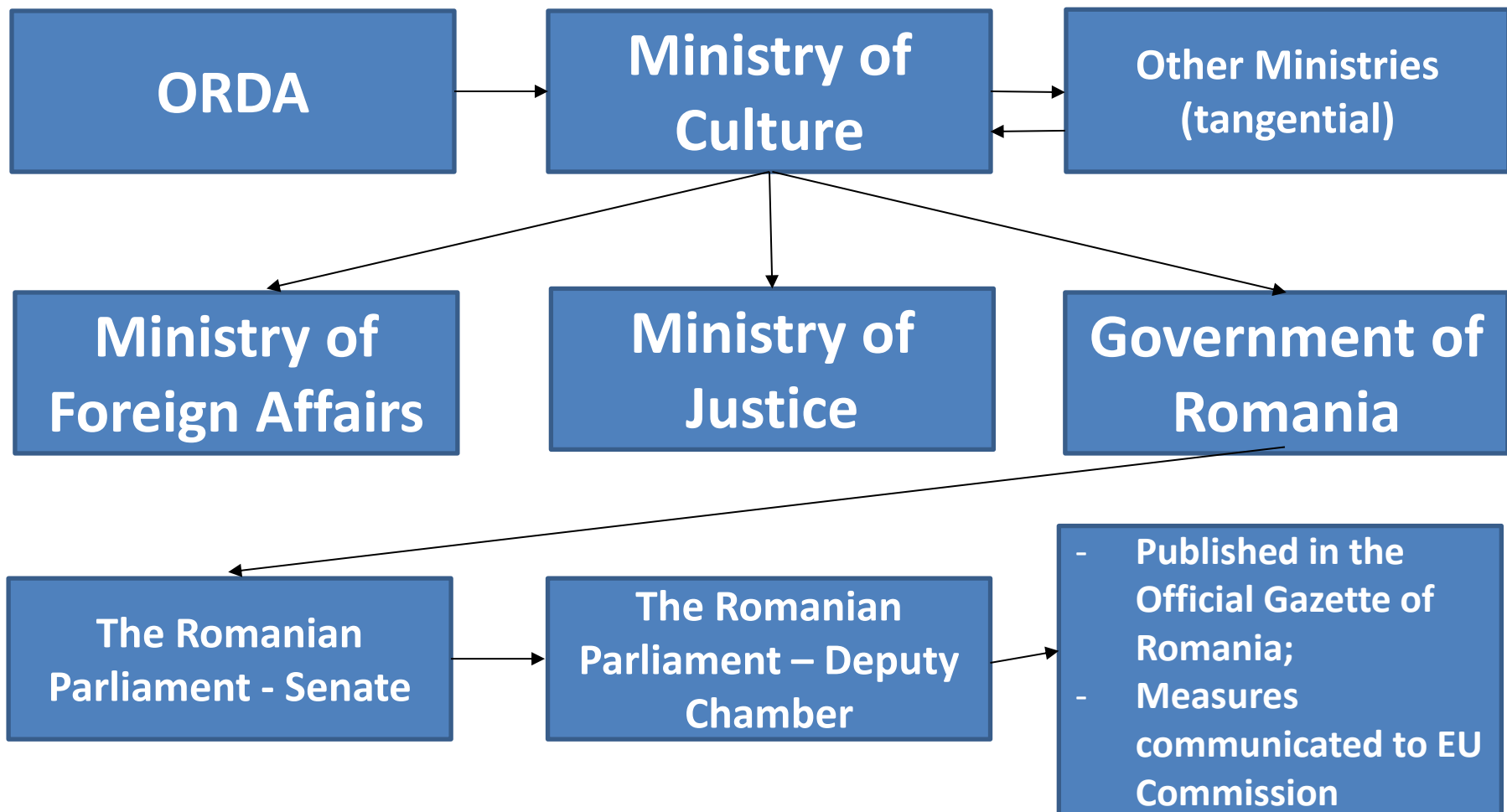
- **After drafting by ORDA:**
- Submitted to the Ministry of Culture who decides the final version (eventual modifications);
  - opened for public consultations;
  - meetings organized at Ministry of Culture with various stakeholders;
  - sent on inter-ministerial endorsing circuit;
  - submitted to the Government;
  - submitted to the Parliament
- *Generally these proposals are accompanied by Tables of Concordance (drafted by ORDA);*
- *The project of modifying the Law also can correct some regulations and eliminate the non-compliance emerged after previous modifications.*

# **ORDA main attributions within the process for transposing the EU Acquis in Romanian copyright law**

## **Related attributions:**

- organize consultations with the interested stakeholders;
- reply in written to the positions expressed by various stakeholders;
- participate at consultations organized by various stakeholders and express its point of view;
- participate at the meetings of the National Working Group on IP – at most new European legal incentives, the topic is debated within the group;
- communicate to the Ministry of Culture its point of view on the debates organized by that entity;
- communicate its point of view related to the Law project submitted to public consultation posted on the website of the Ministry of Culture;
- communicate its opinion on legislative projects in the field of copyright and related rights, on request of the Department for the Relation with the Parliament;
- check the translation of the EU Commission and make the necessary corrections

# Circuit for transposing in national legislation a Directive in the field of copyright



# **Legal Possibilities for transposing in national legislation a Directive in the field of copyright**

Two choices:

- through a project of legislative modification, in Parliamentary Procedure (recommended);
- through an Urgency Ordinance of the Government (as urgent solution, not recommended)

*On both choices ORDA has no competence and cannot estimate transposition term*



# Miscellaneous - National Working Group on IP

- established since June 26, 2006;
- public-private partnership, gathering more than 35 entities, respectively all public authorities with IP prerogatives and representatives of stakeholders (CMOs, fighting against counterfeit and piracy organizations, representatives of various users and industry associations);
- coordinated by the Prosecutor's Office within the Romanian High Court of Cassation and Justice;
- exchange of information platform and provide the framework for the development and encouragement of creativity, innovation, fair competition and IP in general;
- meets on regular basis or in extraordinary sessions.

# Miscellaneous – Ministry of Foreign Affairs

**In terms of compatibility with the EU regulations, the Legislative Harmonization Direction within the Ministry of Foreign Affairs carries out the following:**

- Mandatory endorse the projects of normative acts that aims at transposing within the national legislation of the EU normative acts, that creates the legal framework for their application or has an EU relevance;
- Formulates, if the case, proposals in order to accelerate the process of transposition and implementation. These proposals are transmitted to the competent institutions in order to elaborate the necessary normative acts;
- Examine the proposals under the compatibility with the EU regulations, in order to formulate a point of view of the Government on those, at the request of the Department for the Relation with Parliament;
- Within the inter-ministerial endorsement process that transpose or create an application framework for the EU legal acts, the Ministry of Foreign Affairs is the penultimate, before the Ministry of Justice;

**Reason** - if other institutions receive for endorsing after MAE, these can formulate amendments in contradiction with the EU law, the compatibility being thus affected.

**The table of concordance** – the initiator/co-initiators of the normative act will fill in the table when drafting the project and will annex it to the Reasons expose/Fundamental Note, being sent to the Department for European Affairs

# **Practical example – transposing the CMO Directive in national legislation**

- Transposition term: 2 years - April 10, 2016 (art.43)
- Meeting of the expert group instituted through art. art. 41 of Directive 2014/26/UE – July 5, 2017, Brussels
- COM – five MS have transposed the Directive in the term provided for;
- there were opened 23 causes for non-communication of the national transposition measures;
- MS that has not finalized the transposition process in term: (July 5, 2017): LX, ES, RO, BG, PL, GR, PT;
- ORDA – national competent authority (art. 37).

# **Practical example – transposing the CMO Directive in national legislation**

- ORDA – designated as national competent authority concerning matters relevant to the application of the Directive (art.37)
- ORDA attributions in collective management according to the law:
  - endorses the establishment and supervises the operation of the collective management organizations;
  - controls the operation of the collective management organizations and establishes the measures of abiding by the law or applies sanctions, as the case may be;
  - if the CMO does no longer complies with the conditions or infringes the duties provided by law, by decision of ORDA director general can give a term for the abidance by the law and then to withdraws temporarily the endorsement of functioning, suspending the activity of the CMO.

# Practical example – transposing the CMO Directive – Initial Steps

- **2015 - Consultation Process organized by ORDA**
- ask the written points of view of all CMOs in Romania and other stakeholders regarding the Directive;
- organized various meetings, inviting all implied stakeholders;
- convoke a debate within the National Working group on IP;
- **2016 (January)** - ORDA submitted the draft amendment of the Law no. 8/1996 (including the table of concordance) to the Ministry of Culture;
- Ministry of Culture made some changes to ORDA's draft and in the period 04.03.2016 – 15.04.2016, the Project was uploaded on the website of the Ministry of Culture and opened for public debate.
- On 07.04.2016 was organized at Ministry of Culture HQ a public debate of the project;
- Following the public debate, the project followed the inter-ministerial endorsing circuit, on that occasion, the endorsing miniseries having the possibility to formulate proposals and observations, but the project did not finish the endorsing circuit in 2016;
- The project was upgraded, based on the observations received in the inter-ministerial endorsing stage carried out in 2016;
- The last version, the reasons expose, the table of concordance could be visited on the Ministry of Culture website

# Transposition process – Directive 2014/26/UE

- **January 2016** - ORDA submitted **the draft** amendment of the Law no. 8/1996 (including the concordance table) to the Ministry of Culture;
- **The first version** - drafted by the Ministry of Culture on the basis of the proposals made by ORDA; publicly debated on the ministry's website during 04.03.2016-15.04.2016; **07.04.2016**, a public debate on the draft amendment and completion of the Of Law no. 8/1996;
- **May 2016 - Case 2016/0452 action for failure to comply with the obligation to communicate the national measures**
- **The second version** - drafted by the Ministry of Culture, publicly debated on the ministry's website (July 2016). The project did not complete the inter-ministerial advisory circuit during 2016. ORDA refused to sign the project;
- **February 2017 - reasoned advice in case 2016/0452**
- **The third version** - drafted by the Ministry of Culture (February 2017), adopted by the Government of Romania on May, 25, 2017;

THANK YOU !